Massachusetts Workmen's Compensation Act of 1911 was injured in the scope of his employment in New York and sought to recover from the Mutual Liability Insurance Co. *Held*, that the act contemplates no extraterritorial effect. *In re American Mutual Liability Insurance Co.*, 102 N. E. 693 (Mass.).

The principles involved are discussed in this issue, page 271.

NUISANCE — NATURE OF RIGHT TO MAINTAIN NUISANCE — EFFECT OF ACTION IN RELIANCE UPON PAROL LICENSE. — The plaintiff sued the defendant, an adjoining landowner, for maintaining a nuisance in the form of a pumping station. The defendant claimed an irrevocable license to maintain the nuisance because the plaintiff's grantor, in consideration of the payment of a consensual judgment awarding past and future damages for the nuisance, had discharged the defendant from all claims of this character which at any time might accrue to the owner of the property. *Held*, that the plaintiff can recover. *Panama Realty Co.* v. *City of New York*, 143 N. Y. Supp. 893 (N. Y. App. Div.).

This decision reverses the holding of the lower court to the effect that the defendant had acquired an irrevocable license to maintain the nuisance. The court below considered the right to enjoy land free from nuisance as in the nature of a servitude imposed on the adjoining land. It argued, therefore, that a license to maintain a nuisance, when acted upon, would extinguish this easement or right of the owner of the annoyed land to enjoy his land free from nuisance. For a criticism of the decision of the lower court, see 26 HARV. L. REV. 460. The upper court adopts the proper view that the right to maintain a nuisance to adjoining land is essentially an easement, and can arise, therefore, only by grant or prescription.

PATENTS — NATURE AND REQUISITES FOR PATENT — PREVIOUS ABANDONMENT AS A BAR. — An application was made for a process patent. The applicant had, more than two years before, obtained an apparatus patent, and his application had completely disclosed the process which was the subject of his present application. *Held*, that the process idea, having been abandoned, could not be patented. *Re Leonard's Application for a Patent*, 13 East. L. R. 280 (Canada).

In the United States, as well as in Canada, if an inventor in his application distinctly limits his claims for a patent to less than the full scope of the novel ideas disclosed, the unclaimed inventions are made public property. *Underwood* v. *Gerber*, 149 U. S. 224, 13 Sup. Ct. 854; *McClain* v. *Ostmayer*, 141 U. S. 419, 12 Sup. Ct. 76. It is commonly said that the unclaimed inventions are abandoned or dedicated to the public. *Stirrat* v. *Excelsior Mfg. Co.*, 61 Fed. 980. These terms, it is submitted, are fictitious, as they imply an intent on the part of the inventor which surely does not exist save in rare instances. The doctrine of abandonment really operates as a forfeiture, in certain circumstances, of the right of the inventor to secure a monopoly of his invention by patent. That this is the true significance of the doctrine is indicated by the reluctance of the courts to find abandonment and their insistence that the proof of it be convincing. *Mast* v. *Dempster Mill Mfg. Co.*, 82 Fed. 327, 27 C. C. A. 191; *Ide* v. *Trorlicht, Duncker, & Renard Carpet Co.*, 115 Fed. 137, 53 C. C. A. 341. The courts, nevertheless, treat this fictitious intention as a question of fact and, in accordance with that view, consider that the *primâ facie* appearance of abandonment by unclaimed disclosure in the application may be rebutted by the filing of a separate application for patent on the unclaimed idea. *Victor Talking Machine Co.* v. *American Graphophone Co.*, 145 Fed. 350, 76 C. C. A. 180; *Suffolk* v. *Hayden*, 3 Wall. (U. S.) 315. The result of the principal case would be reached in the United States, not only because of the abandonment, but also on account of the provision in the United States statute that an invention which has been in public

use in the United States for more than two years cannot be the subject of a patent. U. S. REV. STAT. § 4886; *Roemer* v. *Simon*, 95 U. S. 214.

PRESUMPTIONS — EXISTENCE AND EFFECT OF PRESUMPTIONS IN PARTICULAR CASES — CHILD-BEARING: PRESUMPTION THAT A WOMAN OF ADVANCED AGE IS INCAPABLE OF CHILD-BEARING.—The defendant having contracted to buy certain land of the plaintiff refused to perform on the ground that a widow more than seventy years of age might have children who would be entitled to an interest in the property. *Held*, that specific performance will be granted. *Whitney* v. *Groo*, 40 D. C. App. Cas. 496.

In cases like the present, American courts have heretofore uniformly held to the presumption that one may have children throughout life. *Read* v. *Fite*, 8 Humph. (Tenn.) 328; *List* v. *Rodney*, 83 Pa. 483; *Westhofer* v. *Koons*, 144 Pa. 26. These cases are clearly distinguishable from the authorities on which they are based. For the purpose of determining questions of remoteness involved in applying the rule against perpetuities, all living persons are regarded as capable of having issue. *Jee* v. *Audley*, 1 Cox 324. Such a presumption is entertained in determining a wife's right of dower. See 1 THOMAS, COKE UPON LITTLETON, 579. For the same reason, the estate of tenant in tail with possibility of issue extinct can never arise so long as persons whose issue might take are still living. Id. 551. These have now become well-established principles of real property touching the creation and termination of estates, and as such unalterable. In the principal case no rule of property law is involved. The purchaser can demand only a title free from reasonable doubt. *Lyddale* v. *Weston*, 2 Atk. 19. This is merely a question of fact; and it is submitted that the decision in this case is warranted in the light of human experience, and deserving of great respect for breaking away from artificial rules, and applying common-sense principles. Similar decisions have been rendered by common-law courts outside of the United States. *Browne* v. *Warnock*, Ir. R., 7 Ch. D. 3; *In re Tinning and Webber*, 25 Can. L. T. (Occasional Notes) 38. The same result has been reached in cases involving the distribution of trust funds. *Leng* v. *Hodges*, Jac. 585.

QUASI-CONTRACTS — RIGHTS AND OBLIGATIONS OF PARTIES UNDER CONTRACT MADE UNENFORCEABLE BY STATUTE OF FRAUDS. — The plaintiff, a broker, was employed to sell timber lands for the defendant under a contract unenforceable by the Statute of Frauds. He procured a customer who bought the property. *Held*, that the plaintiff cannot recover on a *quantum meruit*. *Cushing* v. *Monarch Timber Co.*, 135 Pac. 660 (Wash.).

While the Statute of Frauds bars any action on the contract itself, the refusal to allow a plaintiff to recover for services actually rendered unjustly enriches the defendant. See 21 HARV. L. REV. 544. Accordingly, in analogous cases, a recovery on a *quantum meruit* has generally been allowed. *Wonsettler* v. *Lee*, 40 Kan. 367, 19 Pac. 862; *Pulbrook* v. *Lawes*, 1 Q. B. D. 284. *Contra*, *Leimbach* v. *Regner*, 70 N. J. L. 608, 57 Atl. 138. The argument against granting quasi-contractual relief is that it would defeat the purpose of the statute. The fallacy here lies in mistaking the nature of quasi-contractual relief. It is based on an obligation imposed by law for the purpose of producing an equitable result, and not on the contract of the parties. See 24 HARV. L. REV. 158. Moreover, since the services have been rendered, there is no danger of fraud or false testimony as to that fact, so that the evil which the statute is intended to guard against cannot occur. Finally, denying the relief effects a palpable injustice never contemplated by the designers of the statute.

RESTRAINT OF TRADE — STATE ANTI-TRUST LEGISLATION — STATUTE PROHIBITING COMBINATIONS OF STOCK CORPORATIONS FOR THE CREATION OF A